

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel.** )  
**W. A. DREW EDMONDSON, in his capacity as** )  
**ATTORNEY GENERAL OF THE STATE OF** )  
**OKLAHOMA and OKLAHOMA SECRETARY** )  
**OF THE ENVIRONMENT C. MILES TOLBERT,** )  
**in his capacity as the TRUSTEE FOR NATURAL** )  
**RESOURCES FOR THE STATE OF OKLAHOMA,** )

**Plaintiff,** )

**vs.** )

**05-CV-0329 TCK-SAJ**

**TYSON FOODS, INC., TYSON POULTRY, INC.,** )  
**TYSON CHICKEN, INC., COBB-VANTRESS, INC.,** )  
**AVIAGEN, INC., CAL-MAINE FOODS, INC.,** )  
**CAL-MAINE FARMS, INC., CARGILL, INC.,** )  
**CARGILL TURKEY PRODUCTION, LLC,** )  
**GEORGE'S, INC., GEORGE'S FARMS, INC.,** )  
**PETERSON FARMS, INC., SIMMONS FOODS, INC.,** )  
**and WILLOW BROOK FOODS, INC.,** )

**Defendants.** )

**TYSON FOODS, INC., TYSON POULTRY, INC.,** )  
**TYSON CHICKEN, INC., COBB-VANTRESS, INC.,** )  
**GEORGE'S, INC., GEORGE'S FARMS, INC.,** )  
**PETERSON FARMS, INC., SIMMONS FOODS, INC.,** )  
**and WILLOW BROOK FOODS, INC.,** )

**Third Party Plaintiffs,** )

**vs.** )

**City of Tahlequah, *et al.*,** )

**Third Party Defendants** )

**DEFENDANTS/THIRD PARTY PLAINTIFFS' REPLY  
TO THE RESPONSE OF THIRD PARTY DEFENDANT, BILL STEWART,  
INDIVIDUALLY AND D/B/A DUTCHMAN'S CABINS, IN OPPOSITION  
TO DEFENDANTS/THIRD PARTY PLAINTIFFS' OPPOSED  
MOTION FOR LEAVE TO FILE AMENDED THIRD PARTY COMPLAINT**

Defendants/Third Party Plaintiffs, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc., Cobb-Vantress, Inc., George's, Inc., George's Farms, Inc., Peterson Farms, Inc., Simmons Foods, Inc., and Willow Brook Foods, Inc., ("Third Party Plaintiffs") hereby submit their Reply to the untimely *Response in Opposition to Defendants/Third Party Plaintiffs' Opposed Motion for Leave to File Amended Third Party Complaint* (Dkt No. 816) filed by Third Party Defendant, Bill Stewart, individually and d/b/a Dutchman's Cabins ("Bill Stewart"). (DKT # 851).<sup>1</sup>

Third Party Plaintiffs' *Opposed Motion for Leave to Amend Third Party Complaint* was filed on June 23, 2006, and all responses to that Motion were due on July 11, 2006 pursuant to LCvR7.2(e). Bill Stewart filed his Response, which was a wholesale adoption of the *Berry Group's Response in Opposition to Defendants/Third Party Plaintiffs' Opposed Motion for Leave to File Amended Third Party Complaint* (Dkt. No. 843) on July 19, 2006, eight days after the deadline for responses had passed, and thus, it should be disregarded. Notwithstanding the tardiness of the filing, in the interest of brevity, Third Party Plaintiffs reply to Bill Stewart's Response by incorporating the arguments and authorities as though fully restated herein submitted in their *Reply to Plaintiffs' Response to Defendants/Third Party Plaintiffs' Opposed Motion for Leave to File Amended Third Party Complaint* (Dkt. No. 858) and their *Reply to the*

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<sup>1</sup> By filing their Reply to Bill Stewart's Response to their Motion for Leave and arguing same before the Honorable Magistrate Judge Joyner, the Third Party Plaintiffs expressly do not waive any objection that they may have to any Order entered by the Federal Magistrate dismissing their third party claims in contravention to Article III of the United States Constitution. See 28 U.S.C. § 636(b)(1)(A); *TPO, Inc. v. McMillen*, 460 F.2 348 (7<sup>th</sup> Cir. 1972).

*Berry Group's Response in Opposition to Defendants/Third Party Plaintiffs' Opposed Motion for Leave to File Amended Third Party Complaint.* (Dkt. No. 859).

Third Party Plaintiffs have clearly met their burden to show that their proposed Amended Third Party Complaint is authorized under Fed. R. Civ. P. 15(a). In opposing the Motion for Leave, Bill Stewart has failed to carry his steep burden at this stage to prove permitting the proposed amendment to the Third Party Complaint would be futile, and therefore, Third Party Plaintiffs' respectfully suggest that their Motion for Leave to file their Amended Third Party Complaint should be granted.

Respectfully submitted,

BY: /s/ A. Scott McDaniel

A. SCOTT McDANIEL, OBA # 16460

CHRIS A. PAUL, OBA #14416

NICOLE M. LONGWELL, OBA #18771

PHILIP D. HIXON, OBA #19121

JOYCE, PAUL & McDANIEL, PLLC

1717 South Boulder Ave., Suite 200

Tulsa, Oklahoma 74119

Telephone: (918) 599-0700

Facsimile: (918) 732-5370

E-Mail: smcdaniel@jpm-law.com

-and-

Sherry P. Bartley (Ark. Bar No. 79009)

*Appearing Pro Hac Vice*

MITCHELL, WILLIAMS, SELIG,

GATES & WOODYARD, P.L.L.C.

425 W. Capitol Ave., Suite 1800

Little Rock, Arkansas 72201

Telephone: (501) 688-8800

**ATTORNEYS FOR PETERSON FARMS, INC.**

BY: /s/ Stephen L. Jantzen

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

STEPHEN L. JANTZEN, OBA #16247

PATRICK M. RYAN, OBA #7864

PAULA BUCHWALD, OBA # 20464

RYAN, WHALEY & COLDIRON, P.C.

119 North Robinson

900 Robinson Renaissance

Oklahoma City, OK 73102

-and-

THOMAS C. GREEN, ESQ.

MARK D. HOPSON, ESQ.

TIMOTHY K. WEBSTER, ESQ.

JAY T. JORGENSEN, ESQ.

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005-1401

-and-

ROBERT W. GEORGE, OBA #18562

KUTAK ROCK LLP

The Three Sisters Building

214 West Dickson Street

Fayetteville, AR 72701-5221

**ATTORNEYS FOR TYSON FOODS, INC.;**  
**TYSON POULTRY, INC.; TYSON CHICKEN,**  
**INC.; AND COBB-VANTRESS, INC.**

BY: /s/ R. Thomas Lay

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

R. THOMAS LAY, OBA #5297

KERR, IRVINE, RHODES & ABLES

201 Robert S. Kerr Ave., Suite 600

Oklahoma City, OK 73102

**ATTORNEYS FOR WILLOW BROOK**  
**FOODS, INC.**

BY: /s/ Randall E. Rose

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

RANDALL E. ROSE, OBA #7753

GEORGE W. OWENS, ESQ.

OWENS LAW FIRM, P.C.

234 W. 13<sup>th</sup> Street

Tulsa, OK 74119

**ATTORNEYS FOR GEORGE'S, INC. AND  
GEORGE'S FARMS, INC.**

BY: /s/ John R. Elrod

(SIGNED BY FILING ATTORNEY WITH  
PERMISSION)

JOHN R. ELROD, ESQ.

VICKI BRONSON, OBA #20574

CONNER & WINTERS, LLP

100 West Central St., Suite 200

Fayetteville, AR 72701

**ATTORNEYS FOR SIMMONS FOODS, INC.**

## CERTIFICATE OF SERVICE

I certify that on the 27th day of July 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

W. A. Drew Edmondson, Attorney General	drew_edmondson@oag.state.ok.us
Kelly Hunter Burch, Assistant Attorney General	kelly_burch@oag.state.ok.us
J. Trevor Hammons, Assistant Attorney General	trevor_hammons@oag.state.ok.us
Robert D. Singletary, Assistant Attorney General	robert_singletary@oag.state.ok.us

Douglas Allen Wilson	doug_wilson@riggsabney.com,
Melvin David Riggs	driggs@riggsabney.com
Richard T. Garren	rgarren@riggsabney.com
Sharon K. Weaver	sweaver@riggsabney.com
Riggs Abney Neal Turpen Orbison & Lewis	

Robert Allen Nance	rnance@riggsabney.com
Dorothy Sharon Gentry	sgentry@riggsabney.com
Riggs Abney	

J. Randall Miller	rmiller@mkblaw.net
David P. Page	dpage@mkblaw.net
Louis W. Bullock	lbullock@mkblaw.net
Miller Keffer & Bullock	

Elizabeth C. Ward	lward@motleyrice.com
Frederick C. Baker	fbaker@motleyrice.com
William H. Narwold	bnarwold@motleyrice.com
Motley Rice	

### **COUNSEL FOR PLAINTIFFS**

Stephen L. Jantzen	sjantzen@ryanwhaley.com
Patrick M. Ryan	pryan@ryanwhaley.com
Paula M. Buchwald	pbuchwald@ryanwhaley.com
Ryan, Whaley & Coldiron, P.C.	

Mark D. Hopson	mhopson@sidley.com
Jay Thomas Jorgensen	jjorgensen@sidley.com
Timothy K. Webster	twebster@sidley.com
Sidley Austin LLP	

Robert W. George	robert.george@kutakrock.com
Kutak Rock LLP	

**COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC.; AND COBB-VANTRESS, INC.**

R. Thomas Lay	rtl@kiralaw.com
Kerr, Irvine, Rhodes & Ables	

Thomas J. Grever  
Lathrop & Gage, L.C.  
Jennifer S. Griffin  
Lathrop & Gage, L.C.  
**COUNSEL FOR WILLOW BROOK FOODS, INC.**

tgrever@lathropgage.com  
jgriffin@lathropgage.com

Robert P. Redemann  
Lawrence W. Zeringue  
David C. Senger  
Perrine, McGivern, Redemann, Reid, Berry & Taylor, PLLC

rredemann@pmrlaw.net  
lzingue@pmrlaw.net  
dsenger@pmrlaw.net

Robert E. Sanders  
E. Stephen Williams  
Young Williams P.A.  
**COUNSEL FOR CAL-MAINE FOODS, INC. AND CAL-MAINE FARMS, INC.**

rsanders@youngwilliams.com  
steve.williams@youngwilliams.com

George W. Owens  
Randall E. Rose  
The Owens Law Firm, P.C.

gwo@owenslawfirmmpc.com  
rer@owenslawfirmmpc.com

James M. Graves  
Gary V. Weeks  
Bassett Law Firm  
**COUNSEL FOR GEORGE'S INC. AND GEORGE'S FARMS, INC.**

jgraves@bassettlawfirm.com

John R. Elrod  
Vicki Bronson  
Conner & Winters, P.C.

jelrod@cwlaw.com  
vbronson@cwlaw.com

Bruce W. Freeman  
D. Richard Funk  
Conner & Winters, LLLP  
**COUNSEL FOR SIMMONS FOODS, INC.**

bfreeman@cwlaw.com

John H. Tucker  
Colin H. Tucker  
Theresa Noble Hill  
Rhodes, Hieronymus, Jones, Tucker & Gable

jtucker@rhodesokla.com  
chtucker@rhodesokla.com  
thill@rhodesokla.com

Terry W. West  
The West Law Firm

terry@thewesetlawfirm.com

Delmar R. Ehrich  
Bruce Jones  
Krisann Kleibacker Lee  
Dara D. Mann  
Faegre & Benson LLP  
**COUNSEL FOR CARGILL, INC. AND CARGILL TURKEY PRODUCTION, LLC**

dehrich@faegre.com  
bjones@faegre.com  
kklee@faegre.com  
dmann@faegre.com

Jo Nan Allen  
**COUNSEL FOR CITY OF WATTS**

jonanallen@yahoo.com

Park Medearis  
Medearis Law Firm, PLLC  
**COUNSEL FOR CITY OF TAHLEQUAH**

medearislawfirm@sbcglobal.net

Todd Hembree  
**COUNSEL FOR TOWN OF WESTVILLE**

hembreelaw1@aol.com

Tim K. Baker  
Maci Hamilton Jessie  
Tim K. Baker & Associates  
**COUNSEL FOR GREENLEAF NURSERY CO., INC., WAR EAGLE FLOATS, INC., and  
TAHLEQUAH LIVESTOCK AUCTION, INC.**

tbakerlaw@sbcglobal.net  
maci.tbakerlaw@sbcglobal.net

David A. Walls  
Walls Walker Harris & Wolfe, PLLC  
**COUNSEL FOR KERMIT AND KATHERINE BROWN**

wallsd@wwhwlaw.com

Kenneth E. Wagner  
Marcus N. Ratcliff  
Laura E. Samuelson  
Latham, Stall, Wagner, Steele & Lehman  
**COUNSEL FOR BARBARA KELLEY D/B/A DIAMOND HEAD RESORT**

kwagner@lswsl.com  
mratcliff@lswsl.com  
lsamuelson@lswsl.com

Linda C. Martin  
N. Lance Bryan  
Doerner, Saunders, Daniel & Anderson, LLP  
**COUNSEL FOR SEQUOYAH FUELS & NORTHLAND FARMS**

lmartin@dsda.com

Ron Wright  
Wright, Stout, Fite & Wilburn  
**COUNSEL FOR AUSTIN L. BENNETT AND LESLIE A. BENNET, INDIVIDUALLY  
AND D/B/A EAGLE BLUFF RESORT**

ron@wsfw-ok.com

R. Jack Freeman  
Tony M. Graham  
William F. Smith  
Graham & Freeman, PLLC  
**COUNSEL FOR "THE BERRY GROUP"**

jfreeman@grahamfreeman.com  
tgraham@grahamfreeman.com  
bsmith@grahamfreeman.com

Angela D. Cotner  
**COUNSEL FOR TUMBLING T BAR L.L.C. and BARTOW AND WANDA HIX**

angelacotneresq@yahoo.com

Thomas J. McGeady  
Ryan P. Langston  
J. Stephen Neas  
Bobby J. Coffman  
Logan & Lowry, LLP

sneas@loganlowry.com



**COUNSEL FOR LENA AND GARNER GARRISON; AND BRAZIL CREEK MINERALS, INC.**

R. Pope Van Cleef, Jr.  
Robertson & Williams

Popevan@robertsonwilliams.com

**COUNSEL FOR BILL STEWART, INDIVIDUALLY AND D/B/A DUTCHMAN'S CABINS**

Lloyd E. Cole, Jr.

colelaw@alltel.net

**COUNSEL FOR ILLINOIS RIVER RANCH PROPERTY OWNERS ASSOCIATION; FLOYD SIMMONS; RAY DEAN DOYLE AND DONNA DOYLE; JOHN STACY D/B/A BIG JOHN'S EXTERMINATORS; AND BILLY D. HOWARD**

Douglas L. Boyd

dboyd31244@aol.com

**COUNSEL FOR HOBY FERRELL and GREATER TULSA INVESTMENTS, LLC**

Michael D. Graves

mgraves@hallestill.com

D. Kenyon Williams, Jr.

kwilliams@hallestill.com

**COUNSEL FOR POULTRY GROWERS**

William B. Federman

wfederman@aol.com

Jennifer F. Sherrill

jfs@federmanlaw.com

Federman & Sherwood

Teresa Marks

teresa.marks@arkansasag.gov

Charles Moulton

charles.moulton@arkansasag.gov

Office of the Attorney General

**COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION**

John B. DesBarres

johnd@wcalaw.com

**COUNSEL FOR JERRY MEANS AND DOROTHY ANN MEANS, INDIVIDUALLY AND AS TRUSTEE OF JERRY L. MEANS TRUST AND DOROTHY ANN MEANS TRUST; BRIAN R. BERRY AND MARY C. BERRY, INDIVIDUALLY AND D/B/A TOWN BRANCH GUEST RANCH; AND BILLY SIMPSON, INDIVIDUALLY AND D/B/A SIMPSON DAIRY**

Carrie Griffith

griffithlawoffice@yahoo.com

**COUNSEL FOR RAYMOND C. AND SHANNON ANDERSON**

Reuben Davis

rdavis@boonesmith.com

**COUNSEL FOR WAUHILLAU OUTING CLUB**

Monte W. Strout

strout@xtremeinet.net

**COUNSEL FOR CLAIRE WELLS AND LOUISE SQUYRES**

Thomas Janer

scmj@sbcglobal.net

Jerry M. Maddux

**COUNSEL FOR SUZANNE M. ZEIDERS**

Michael L. Carr  
Michelle B. Skeens  
Robert E. Applegate  
Holden & Carr

mcarr@holdenokla.com  
mskeens@holdenokla.com  
rapplegate@holdenokla.com

**COUNSEL FOR SNAKE CREEK MARINA, LLC**

I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert  
Secretary of the Environment  
State of Oklahoma  
3800 North Classen  
Oklahoma City, OK 73118  
**COUNSEL FOR PLAINTIFFS**

Ancil Maggard  
c/o Leila Kelly  
2615 Stagecoach Drive  
Fayetteville, AR 72703  
**PRO SE**

Thomas C. Green  
Sidley Austin Brown & Wood LLP  
1501 K Street NW  
Washington, DC 20005  
**COUNSEL FOR TYSON FOODS, INC.,  
TYSON POULTRY, INC., TYSON  
CHICKEN, INC.; AND COBB-VANTRESS,  
INC.**

James R. Lamb  
Dorothy Jean Lamb  
Strayhorn Landing  
Rt. 1, Box 253  
Gore, OK 74435  
**PRO SE**

G. Craig Heffington  
20144 W. Sixshooter Rd.  
Cookson, OK 74427  
**ON BEHALF OF SIXSHOOTER RESORT  
AND MARINA, INC.**

James C. Geiger  
Kenneth D. Spencer  
Jane T. Spencer  
Address Unknown  
**PRO SE**

Jim Bagby  
Rt. 2, Box 1711  
Westville, OK 74965  
**PRO SE**

Robin Wofford  
Rt. 2, Box 370  
**Watts, OK 74964  
PRO SE**

Doris Mares  
Cookson Country Store and Cabins  
32054 S. Hwy 82  
P. O. B ox 46  
Cookson, OK 74424  
**PRO SE**

Richard E. Parker  
Donna S. Parker  
Burnt Cabin Marina & Resort, LLC  
34996 South 502 Road  
Park Hill, OK 74451  
**PRO SE**

Eugene Dill  
32054 S. Hwy 82  
P. O. Box 46  
Cookson, OK 74424  
**PRO SE**

Marjorie A. Garman  
Riverside RV Resort and Campground LLC  
5116 Hwy. 10  
Tahlequah, OK 74464  
**PRO SE**

Gordon and Susann Clinton  
23605 S. Goodnight Ln.  
Welling, OK 74471  
**PRO SE**

William and Cherrie House  
P. O. Box 1097  
Stillwell, OK 74960  
**PRO SE**

/s/ A. Scott McDaniel